

AMOCO PRODUCTION CO.

IBLA 82-73

Decided December 21, 1982

Appeal from a decision of the Eastern States Office, Bureau of Land Management, holding noncompetitive over-the-counter oil and gas lease offer for rejection. ES-25332 (Tennessee).

Affirmed.

1. Mineral Leasing Act for Acquired Lands -- Oil and Gas Leases: Acquired Lands -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Consent of Agency

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), the Secretary of the Interior is without authority to waive compliance with a condition imposed by the agency having jurisdiction over the acquired lands as a prerequisite to giving its consent to issuance of a noncompetitive oil and gas lease. Moreover, the Department has no authority to require that the agency provide a rational justification for imposition of the condition.

APPEARANCES: William E. Block, Jr., Esq., Craig P. Hall, Esq., Washington, D.C., for appellant; Herbert S. Sanger, Jr., Esq., General Counsel, Tennessee Valley Authority, Knoxville, Tennessee, for the Tennessee Valley Authority.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The Amoco Production Company has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated August 28, 1981, holding its noncompetitive over-the-counter oil and gas lease offer, ES-25332, for rejection.

On August 12, 1980, appellant filed oil and gas lease offer ES-25332 with BLM for approximately 2,110 acres of acquired land situated in Grainger and Hawkins Counties, Tennessee, pursuant to the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 351 (1976). BLM subsequently

requested the Tennessee Valley Authority (TVA), the agency having jurisdiction over the land, to complete a title report form with respect to appellant's oil and gas lease offer. By letter dated July 21, 1981, TVA replied to the BLM request, stating:

TVA's policy is to withhold consent to lease TVA lands for oil and gas exploration unless those lands are necessary to provide a land base sufficient to constitute a drilling unit. In view of this policy, we feel it is unnecessary to complete the Title Report forms at this time and are returning them to you. If you can verify for us that any or all of the requested tracts are needed to establish such a drilling unit or units, we will be glad to process the Title Report forms upon receipt of your verification.

In its August 1981 decision, BLM required appellant to submit evidence, within 30 days, "to support the necessity of these lands to establish a drilling unit," or the offer would be rejected.

Rather than submit the requested evidence, appellant has appealed the August 1981 decision. In its statement of reasons for appeal, appellant recognizes that the Secretary of the Interior is required under section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), to obtain the consent of the agency having jurisdiction over the lands as a prerequisite to leasing, but contends that the Secretary has authority to require that the agency provide a "rational justification" where it makes its consent contingent on certain conditions. This justification should be rationally related to an appropriate management objective, i.e., the purposes for which the lands were acquired or are being managed. Appellant argues that this requirement would involve no usurpation of the authority of the jurisdictional agency, but rather would provide a "clarifying statement as to the exercise of that authority" (Statement of Reasons at 4). Appellant notes that the Secretary requires no less when exercising his discretion to lease public lands under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1976). See, e.g., Esdras K. Hartley, 23 IBLA 102 (1975). Appellant concludes that it is not requesting the Board to require that the Secretary "look behind the detailed reasons given for the refusal to consent when those reasons are plausibly related to the purposes for which the lands are managed" (Statement of Reasons at 4).

With respect to the particular condition imposed by TVA, appellant contends that it is impossible to comply with that condition because appellant is in a "Catch 22" situation. Appellant contends that only a lease will permit the exploration which in turn would generate the data sufficient to determine whether the lands sought are needed to establish a drilling unit. TVA's condition, however, prohibits issuance of the lease until it is shown that the acreage is needed. Appellant notes that it could drill in adjacent areas, but that it is a risky venture, since a prudent operator would be reluctant to drill wells in the vicinity of open acreage which he did not have under lease. Appellant argues that this situation ultimately precludes oil and gas development. The condition imposed by TVA, appellant argues, is not rationally related to the purpose for which the lands were acquired or are being managed. Appellant requests the Board to remand the case to BLM

"with instructions that TVA be called upon to supply the required rational justification." Id. at 6.

On December 2, 1981, TVA filed a response to appellant's statement of reasons. In that response, TVA argues that the Secretary of the Interior is without authority to review a decision by the jurisdictional agency to impose conditions as a prerequisite to giving its consent to leasing. TVA notes that this conclusion is supported by section 3 of the Mineral Leasing Act for Acquired Lands, supra, and a long line of Departmental decisions. In addition, TVA notes that on a number of occasions the Board has specifically declined to review the condition imposed either where no reason was given for its imposition, Duncan Miller, 5 IBLA 364 (1972), or the condition was considered unreasonable, Susan D. Snyder, 9 IBLA 91 (1973).

[1] Section 3 of the Mineral Leasing Act for Acquired Lands, supra, provides, in pertinent part:

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit \* \* \* and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered.

See 43 CFR 3109.3-1. We have long held that the statute precludes mineral leasing of acquired lands by the Secretary of the Interior without the consent of the administrative agency having jurisdiction over the lands. Altex Oil Corp., 66 IBLA 307 (1982), and cases cited therein; Leeco, Inc., 23 IBLA 194 (1976) (TVA). This is distinguished from mineral leasing under the Mineral Leasing Act, supra, where the Secretary of the Interior is vested with the sole authority for deciding whether to issue a lease for public lands. 1/ See, e.g., Natural Gas Corp. of California, 59 IBLA 348 (1981).

This dichotomy between the two statutes similarly applies to the decision to impose certain conditions as a prerequisite to issuing a lease. For instance, under the Mineral Leasing Act, supra, BLM may condition issuance of a lease on the execution of certain stipulations, subject to a determination by the Secretary of the Interior that the decision is supported by valid reasons and that the stipulations are a reasonable means to accomplish a proper Departmental purpose. Max B. Lewis, 56 IBLA 293 (1981); James E. Sullivan, 54 IBLA 1 (1981); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972) (Forest Service Stipulations). On the other hand, under the Mineral Leasing Act for Acquired Lands, supra, while the jurisdictional agency may condition issuance of a lease on the execution of certain stipulations, the Secretary of the Interior has no authority to waive execution of the stipulations or to alter their terms. Thomas Connell, 46 IBLA 331 (1980), and

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1/ In certain instances, a service or bureau within the Department may have jurisdiction over acquired lands, in which case the Secretary of the Interior would have the sole authority for deciding whether to issue a lease for such lands. See Mardam Exploration, Inc., 52 IBLA 296 (1981). However, this is not the situation in the instant case.

cases cited therein. This is a longstanding rule and appellant has offered no reason to depart from it. Moreover, it applies in the instant case where TVA has conditioned the giving of its consent on appellant's compliance with a request to demonstrate that the lands sought are needed to establish a drilling unit. Regardless of any views the Board may have regarding the wisdom of such a precondition, the Department has no authority to waive compliance.

Appellant states that the Board should, in effect, require TVA to supply a "rational justification" for its policy. We decline to do so because no useful purpose would be served since, ultimately, the Secretary of the Interior has no authority to waive or modify that policy. Rather, appellant's sole recourse, herein, is to pursue its request for clarification or modification with TVA. See Duncan Miller, 1 IBLA 266 (1971); Thomas B. Cole, A-30444 (Dec. 6, 1965).

Insofar as the dissenting opinion is concerned, we would note that it attempts to do indirectly what cannot be done directly; namely, require an administering agency to lease under terms and conditions which we accept rather than those it desires. Congress has clearly chosen to vest initial discretion to lease, as well as the determination as to the terms under which leasing may occur, in the agency administering the acquired lands. It is not for us to say Congress has erred.

Appellant is allowed 30 days from receipt of this decision to comply with the requirement of the August 1981 BLM decision that it support the necessity of the lands involved herein to establish a drilling unit. Failure to comply within the time allowed will result in the final rejection of lease offer ES-25332. Appellant, of course, is also at liberty to attempt to convince TVA to modify its position.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed; and the case files remanded for further action not inconsistent herewith.

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James L. Burski  
Administrative Judge

I concur:

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Anne Poindexter Lewis  
Administrative Judge

## ADMINISTRATIVE JUDGE IRWIN DISSENTING:

The majority opinion declines to grant Amoco's requested relief (to remand the case to BLM so it can request of TVA a justification for its policy of withholding consent to lease the acquired lands applied for) "because no useful purpose would be served since, ultimately, the Secretary of the Interior has no authority to waive or modify that policy" (Majority Opinion at 282).

Although I agree the Department must ultimately accede to another agency's withholding of consent, I do not agree that the majority's approach to that result is sound. Neither proper administration of section 3 of the Mineral Leasing Act for Acquired Lands nor fundamental principles of accountable governance is served. The Department, after all, has considerable experience in conditioning the use of land for the purpose of leasing in ways that protect other purposes. Inquiring of the TVA why it insists on consenting only if the lands are necessary to provide the area needed for a sufficient land base for a drilling unit might inform the Department of reasons that it could jointly work with the TVA to accommodate in a way that would satisfy both TVA's concerns and permit the requested leasing. To simply shrug and tell an applicant to talk to the other agency if it says "no" does not serve the statutory purpose of leasing lands where doing so will not conflict with the reasons for which they were acquired or are being used.

In addition, the Department has a legitimate role in ensuring the accountable administration of provisions for which it shares responsibility. This Board, in particular, is delegated the responsibility, on behalf of the Secretary, to assure that the laws entrusted to the Department are implemented both legally and properly. Our role within the Department is analogous to that of reviewing courts with respect to us: "Judicial review must operate to ensure that the administrative process itself will confine and control the exercise of discretion. Courts should require administrative officers to articulate the standards and principles that govern their discretionary decisions in as much detail as possible." EDF v. Ruckelshaus, 439 F.2d 584, 598 (D.C. Cir. 1971). <sup>1/</sup> See generally Historic Green Springs, Inc. v. Bergland, 497 F. Supp. 839, 851-57 (E.D. Va. 1980).

In this case all we have is TVA's unarticulated fiat: "As we have indicated in the past, TVA's policy is to withhold consent \* \* \*." Letter of July 21, 1981, from John R. Paulk, Director, Division of Land and Forest Resources, TVA, to Jeff Holdren, Chief, Division of Lands and Minerals, BLM. Amoco offers plausible reasons why this policy may not make sense, at least in the circumstances of this case. TVA's answer makes no effort to respond to these arguments or even to explain the policy in passing. Instead, it

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<sup>1/</sup> The court continued: "Discretionary decisions should more often be supported with findings of fact and reasoned opinions. When administrators provide a framework for principled decision-making, the result will be to diminish the importance of judicial review by enhancing the integrity of the administrative process, and to improve the quality of judicial review in those cases where judicial review is sought." Id.

merely makes a jurisdictional argument that the statute precludes us even from asking. It apparently would prefer not to be bothered. This is hardly the way to promote cooperative governing; it surely is not the way to engender the confidence of the governed.

While we may not have the final word on how another agency administers lands under its jurisdiction (and properly so), we are surely entitled -- indeed, obligated -- to know that that agency's decision under section 3 is based on relevant facts and consonant with the appropriate law. To be sure, it takes more effort. Due process does. And all would benefit from that effort. An articulation of the rationale for the policy by the TVA would give that agency an opportunity to reexamine it and make sure it is applicable in this situation, would give the Department the opportunity of reviewing whether that rationale would be compatible with some form of leasing, however conditioned, and would give the applicant the courtesy and benefit of being told why his application was denied and what reasons he must either accept or contend with.

I would remand the case to the Eastern States Office with instructions to inquire of TVA the reasons for its policy in general and its responses to Amoco's objections to its application in this case.

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Will A. Irwin  
Administrative Judge

